

Remarks

The Office Action dated April 24, 2008 has been received and reviewed. Claims 38-72 are pending in this application. Claims 38-72 stand rejected.

Objection to and Rejection of Claims 69 Through 72

Applicants have amended claims 69 through 72 in view of the objections and rejections of those claims on formal grounds as set forth in the Office Action. With the amendments shown above, those claims are believed to satisfy 35 U.S.C. 112.

Applicants note that the plurality of juxtaposed units (recited in claim 70) are described at, for example, page 8, in the fourth paragraph, and persons of ordinary skill in the art would recognize in view of that and other disclosure in the application that the claimed subject matter is sufficiently clear to satisfy the requirements of the statute.

Reconsideration of the objection and rejection of those claims is respectfully requested.

Rejection of Claims 38 Through 72 Under 35 USC 102

Claims 38 through 72 are rejected under 35 USC 102(b) or (e) as anticipated by U.S. Patent No. 1,707,967 (Abbott), U.S. Patent No. 2,583,821 (DuBois) or U.S. Patent No. 7,040,483 (Inuzuka et al.). The Examiner indicated that “[e]ach reference appears to disclose all or most of the elements of the claims. For example, with reference to independent claim 38, each reference discloses a container having all of the elements of the claims.” The Examiner went on to mention that the references disclosed a container inherently capable of storing and dispensing a flowable substance, a base and cover member, and a cannula and compartment as claimed, all without identifying any specific structure in any of the references that corresponds to any limitation in the claims. Applicants respectfully disagree with the rejection and request reconsideration.

As a threshold matter, Applicants respectfully submit that the Examiner has failed to make out a *prima facie* case of unpatentability under 35 U.S.C. 102 over any one of the applied references, because of the complete lack of any specific identification of the structure in even one of the references that corresponds to a limitation in even one of the claims. In the interests of advancing prosecution, Applicants will attempt to review the references in view of the claims and identify the distinguishing characteristics, but if the Examiner decides to maintain a novelty rejection over Abbott, DuBois, or Inuzuk et al., Applicants respectfully request that the

Examiner issue a further non-final office action that clearly matches the limitations of any and all of the rejected claims to disclosure in the reference(s), preferably including reference numbers where available.

Applicants have amended independent claim 38 in order to clarify certain aspects of the present invention. Specifically, the claimed invention comprises a base member that is a sheet, as described throughout the specification as filed. Because the application already noted that in all aspects of the present invention the base member is a sheet, see page 6, line 20, this amendment does not narrow the scope of claim 38 from what would already have been the proper interpretation of the term "base member." Claim 59, which was superfluous, has been canceled.

Although the structure recited in the pending claims was not mapped against any of the applied prior art, Applicants note that neither Abbott nor DuBois discloses a device of the type claimed in claim 38, including a base member made of a sheet. Accordingly neither reference can anticipate claim 38. Unuzuk et al. also does not anticipate the invention of claim 38, because it does not disclose an "open ended pocket area" as claimed. Both containing spaces 21 and 22 are said to be "closed," at for example col. 5, line 5. This must be so, because each space is said to contain a medicament, and if either space were "open ended" as claimed, the medicament would escape or be exposed to the environment. See col. 5, lines 11-15 ("The medicaments contained separately within the spaces 21 and 22 are mixed with each other when necessary, and from the top-sided containing space 21, the mixed medicaments are discharged through the tube 23.").

Because each of the applied prior art references does not disclose at least one feature of the invention recited in claim 38, that claim is patentable under 35 U.S.C. 102. The remaining claims in the application all depend directly or indirectly from claim 38, and are therefore patentable under 35 U.S.C. 102 for at least the same reasons as claim 38. Reconsideration of the rejection of claims 38 through 72 is respectfully requested.

Rejection of Claims 38 Through 72 Under 35 U.S.C. 103(a)

Claims 38 through 72 were rejected in the alternative under 35 U.S.C. 103(a) over Abbott, DuBois, and/or Inuzuk et al. The only explanation of that rejection reads as follows: "Should any reference be later deemed not to show an element or feature of the claims that is known in the relevant art, then the examiner considers that

it would have been obvious to provide the relevant apparatus with the known element or feature, for the purpose of improving its performance or utility."

For reasons similar to those noted above with respect to the lack of a prima facie case of lack of novelty, Applicants respectfully submit that the Examiner has failed to make out a prima facie case of unpatentability under 35 U.S.C. 103 over any one or more of the applied references. Specifically, there was no determination of all of the differences between the pending claims and the applied prior art, nor any assessment of whether those differences would have been obvious in view of the disclosure of one or more of the applied references apart from the conclusion that any differences identified in the future would have been obvious. This is impermissible speculation substituted for analysis, and Applicants are unable to respond because of the lack of specificity in the rejection. If the Examiner decides to maintain an obviousness rejection over Abbott, DuBois, or Inuzuk et al., Applicants respectfully request that the Examiner issue a further non-final office action that clearly identifies specific differences between the pending claims and the prior art, and clearly explains why those differences would have been obvious to a person of ordinary skill in the art at the time the invention was made.

All outstanding objections and rejections are believed to have been met and overcome. If a telephonic conference with Applicants' undersigned representative would be useful in advancing the prosecution of the present application, the Examiner is invited to contact the undersigned at (651) 736-4050. A notice of allowance for all pending claims is respectfully solicited.

Respectfully submitted,



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